

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.620 OF 1992

Keshavrao S. Nawadkar ...Applicant
VS.
Nilu Shripati Navadkar ...Respondent
Ms Prachi Tatake i/b Mr.V.A.Thorat for the Applicant

CORAM: A.S.OKA, J.
DATE : JUNE 21, 2007.

P.C.:

1. Heard learned Advocate for the Applicant. The Applicant is the original plaintiff who has taken an exception to the order dated 21st September 1992 passed by the Trial Court by which Issue No.5 has been answered by holding that the counter claim filed by the Respondent was maintainable in law.
2. The Revision Applicant is the original Plaintiff. He filed a suit for specific performance of alleged agreement for sale. The respondent along with his written statement filed a counter claim in which a prayer was made for possession of the suit property after removing a shed erected thereon by the Revision Applicant.
3. The submission of the learned Advocate for the Revision Applicant is that the counter claim made by the Respondent is beyond the scope of the suit as the suit is for enforcing the agreement for sale. It is submitted that the learned Trial Judge has committed an error by holding that the counter claim was not maintainable.

4. I have considered the submission. In view of the plain language of Rule 6A of Order VIII of the Code of Civil Procedure, 1908, it is obvious that the counter claim is maintainable. The counter claim relates to the same property which is the subject matter of the suit filed by the Revision Applicant. It is not the case of the Revision Applicant that the counter claim is beyond the pecuniary jurisdiction of the Trial court.

5. In the case of Gurubachan Singh Vs. Bhag Singh and others (A.I.R. 1996 S.C. page 1087) the Apex Court held that even in a suit simplicitor for injunction, a counter claim for possession by a Defendant is maintainable.

6. This Revision Application was kept pending as the learned Single Judge felt that there is a conflict of views expressed by the learned Single Judges on the issue. It appears that a Division Bench of this Court by order dated 27th November 2006 held that the question referred to the larger bench has already been decided by the aforesaid decision in case of Gurubachan (supra).

7. There is no merit in the Revision Application and the same is dismissed with no order as to costs.

8. All contentions of the parties in the pending suit and the

counter claim are expressly kept open.

JUDGE